IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

Ankit Mishra Vs. State of Rajasthan & Anr.

S.B.CR.MISC. PETITION NO.1300/2006

DATE OF ORDER :: October 13, 2006

PRESENT

HON'BLE MR.JUSTICE H.R.PANWAR

Mr. R.K.Charan, for the petitioner.
Mr.Ashok Upadhyaya, P.P.
Mr.Sanjeev Johari, for non-petitioner No.2, U.I.T.

BY THE COURT:

Mr. Ashok Upadhyaya appears for non-petitioner No.1, the State and Mr. Sanjeev Johari for non-petitioner No.2, Urban Improvement Trust, Jodhpur. Service is, therefore, complete.

This criminal misc. petition under section 482 Cr.P.C. is directed against the order dt. 19.9.2006 passed by the Chief Judicial Magistrate, Jodhpur (for short 'the trial court' hereinafter), whereby the trial court dismissed the application filed by the petitioner seeking permission to go abroad for higher education as the petitioner has been selected for higher education in United Kingdom for Master of Business

Administration. The course is for about one and a half years and six months is for the placement and, therefore, the petitioner seeks to remain out of the country during the pendency of the criminal case No.670/2004 for a period of two years.

I have heard learned counsel for the petitioner and the Public Prosecutor for the State as also the counsel appearing for UIT, Jodhpur.

A complaint has been filed by the UIT, Jodhpur against the present petitioner for violation/contravention of provisions of section 72 of the Rajasthan Urban Improvement Act, 1959 (for short 'the Act' hereinafter). Sub-section (2) of section 89-A of the Act provides that any person who uses any land or building in contravention of sub-section (2) of section 72, or in contravention of the terms or conditions prescribed by regulations under the proviso to that sub-section, shall be punishable with fine which may extend to two thousand rupees.

Learned counsel for the petitioner submits that the petitioner is prepared to deposit a fine amount even during the pendency of the case and undertake that the matter pending before the trial court will not be delayed and the same will be conducted through his counsel without disputing his identity or

the presence of the petitioner.

Having regard to the facts and circumstances of the case and the fact that offence is punishable with a fine which may extend to two thousand rupees, in my view keeping the educational career of the petitioner, it would be expedient to permit him to go abroad for higher education for two years from today and as undertaken by the counsel for the petitioner that case against the petitioner will be conducted through his counsel even in absence of the petitioner up to the conclusion of the trial.

In the result, the criminal misc. petition is allowed and it is directed that the petitioner be permitted to go abroad for two years from today and the case against the petitioner before the trial court shall be conducted through his counsel as also the petitioner shall deposit a sum of Rs.2000/- before the trial court as the maximum amount of fine so that even if the complaint succeeds ultimately, interest of the complainant is protected.

[H.R.PANWAR],J.

m.asif/-